

Senate Bill No. 1828

CHAPTER 681

An act to add Sections 2242.1 and 4067 to the Business and Professions Code, relating to medicine, and making an appropriation therefor.

[Approved by Governor September 24, 2000. Filed
with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1828, Speier. Dangerous drugs and devices.

The Medical Practice Act provides that it is unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs or dangerous devices, as defined, without a good faith prior examination and medical indication therefor. The Pharmacy Law provides for the regulation and licensing of pharmacists, and regulates the furnishing and dispensing of dangerous drugs or dangerous devices.

This bill would prohibit any person or entity from prescribing, dispensing, or furnishing dangerous drugs or dangerous devices on the Internet for delivery to any person in this state, except as specified. This bill would also prohibit, pursuant to the Pharmacy Law, any person or entity from dispensing or furnishing, or causing the dispensing or furnishing of, dangerous drugs or dangerous devices on the Internet for delivery to any person in this state without a prescription issued pursuant to a good faith prior examination under specified conditions.

This bill would permit either a fine of up to \$25,000 per occurrence pursuant to a citation issued by the board or a civil penalty of \$25,000 per occurrence to be enforced by the Attorney General. The bill would require the fines and civil penalties to be deposited into the Contingent Fund of the Medical Board of California or the Pharmacy Board Contingent Fund. Because these contingent funds are continuously appropriated funds, the bill would make an appropriation. For notifications made on and after January 1, 2002, this bill would provide for the Franchise Tax Board to collect the fine or the civil penalties from tax refunds or lottery winnings otherwise payable to violators. This bill would also require violations by nonresidents to be reported to the appropriate professional licensing authority.

Because a violation of these provisions would also be a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 2242.1 is added to the Business and Professions Code, to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication therefor, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242.

SEC. 2. Section 4067 is added to the Business and Professions Code, to read:



4067. (a) No person or entity shall dispense or furnish, or cause to be dispensed or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state without a prescription issued pursuant to a good faith prior examination if the person or entity either knew or reasonably should have known that the prescription was not issued pursuant to a good faith prior examination, or if the person or entity did not act in accordance with Section 1761 of Title 16 of the California Code of Regulations.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Pharmacy Board Contingent Fund.

(e) Nothing in this section shall be construed to permit the unlicensed practice of pharmacy, or to limit the authority of the board to enforce any other provision of this chapter.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

